No. 95-2024 (3)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

C. MARTIN LAWYER, III,
Appellant,

v.

THE UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,
Appellees.

On Appeal from the United States District Court for the Middle District of Florida

MOTION TO AFFIRM OF STATE APPELLEES

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QUESTIONS PRESENTED

Appellant brought suit seeking (a) a declaration that one of the districts in Florida's legislative districting plan violated the equal protection clause, (b) elimination of the challenged plan, and (c) its replacement by a new plan that complies with the equal protection clause. With the State's consent, the three-judge district court eliminated the challenged plan and, after a hearing, adopted a new plan. The questions presented are whether the new plan complies with the equal protection clause and whether, because of the mediation process that led to the State's proposal of the new plan, the district court violated the separation of powers and federalism in adopting the new plan.

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On Appeal from the United States District Court for the Middle District of Florida

MOTION TO AFFIRM OF STATE APPELLEES

This suit was brought challenging District 21 of Florida's State Senate districting plan as improperly race-based. Appellant's complaint sought three specified forms of relief: (a) a declaration that the Florida plan violated the equal protection clause, (b) elimination of the challenged plan, and (c) its replacement by a new plan that complies with the equal protection clause. Complaint at 6 (Apr. 14, 1994); *see id.* ¶ 4. With the consent of the State, the three-judge district court in this case eliminated the challenged plan and, after a hearing, adopted a new plan that it found to comply with the equal protection clause. J.S. App. 1a-18a. The State appellees — the State of Florida, the Florida Senate, the Florida House of Representatives, and the Florida Secretary of State — hereby move this Court to affirm the district court judgment on the ground that appellant received everything to which he was entitled: elimination of the challenged plan and its replacement by a constitutional plan.

STATEMENT

A. Background

The Florida State Senate districting plan that is challenged in this lawsuit grew out of the redistricting process and federal-court litigation that followed the 1990 census. *See Johnson v. DeGrandy,* 114 S.Ct. 2647, 2651-52 (1994). On April 10, 1992, the Florida Legislature adopted Senate Joint Resolution 2-G (SJR 2-G) reapportioning the State's 40 Senate Districts (Plan 267) and 120 House Districts (Plan 268). On May 13, 1992, the Florida Supreme Court approved the plans, as provided by Article III, Section 16(c), of the State Constitution. *In re Constitutionality of SJR 2G,* 597 So.2d 276 (Fla. 1992); *see Johnson,* 114 S.Ct. at 2651.

The Florida Attorney General then submitted the plans to the United States Department of Justice for preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Five Florida counties, including Hillsborough, are subject to the preclearance requirements of Section 5. On June 16, 1992, the Justice Department denied preclearance, objecting to the Senate plan because of a problem it perceived in the Hillsborough County area. *Johnson,* 114 S.Ct. at 2652 n.2.

On June 22, 1992, after state officials indicated that they did not intend to convene the legislature in an extraordinary apportionment session, the Florida Supreme Court adopted an amended plan designed to address the Justice Department's objection. *In re Constitutionality of SJR 2G,* 601 So.2d 543, 544-47 (Fla. 1992); *Johnson,* 114 S.Ct. at 2652 n.2. District 21 of the Florida Supreme Court Plan (Plan 330, the plan challenged in the present suit) had a black voting age population of 45.0%. The district included parts of the three counties adjacent to Tampa Bay — Hillsborough, Pinellas, and Manatee —

plus a narrow "finger" extending into rural Polk County. The Florida Supreme Court majority observed that, although Polk County black voters might have little community of interest with those in Hillsborough and Pinellas counties other than their race, "under the law, community of interest must give way to racial and ethnic fairness." *In re Constitutionality of SJR 2G,* 601 So.2d at 543, 546. Less than two weeks after the State Supreme Court acted, the United States District Court for the Northern District of Florida also adopted Plan 330. *DeGrandy v. Wetherell,* 815 F.Supp. 1550, 1558 n.11 (N.D. Fla. 1992), *aff'd in part, rev'd in part sub nom. Johnson v. DeGrandy,* 114 S.Ct. 2647 (1994).

B. Proceedings Below

1. *The Complaint.* On April 14, 1994, a group of plaintiffs, including appellant, filed a complaint challenging Plan 330's definition of Florida Senate District 21. They sought a declaration of its invalidity under the equal protection clause, its elimination, and its replacement by a plan for District 21 that would afford equal protection. Complaint at 6 (prayer for relief).[1] The named defendants were the State of Florida and the United States Department of Justice. Complaint ¶¶ 2-3.

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[1] The Complaint's prayer for relief — in addition to including the usual final request for fees, costs, and any other appropriate relief — asked that the Court "(a) enter a Declaratory Judgment that the Reapportionment Plan [Plan 330] violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; (b) enter an Injunction prohibiting the State of Florida from holding any future Senatorial elections based on the 1992 redistricting plan; [and] (c) [e]nter an order requiring the State of Florida to reconfigure the Senatorial Districts in the State of Florida to comport with traditional districting princip[les] of contiguity, compactness, and communities of interest, thereby eliminating the racial gerrymandering which brought about the current senatorial districting plan." Complaint at 6.

During the course of the proceedings, the Florida Senate, the Florida House of Representatives, the Florida Secretary of State, District 21 Senator James T. Hargrett, Jr., and Moease Smith, *et al.*, intervened.

2. *The Remedial Proposal.* While the case was in preparation for trial, this Court issued its decision in *Miller v. Johnson,* 115 S.Ct. 2475 (1995). In response to *Miller,* the state parties chose to try to avoid further costly and divisive litigation by seeking — along with all of the other litigants — to negotiate a resolution to the case. The process that ensued was conducted with the assistance of a court-appointed mediator. *See* J.S. App. 5a. Following declaration of an impasse in mediation, the parties resumed negotiations. Transcript of November 20, 1995, Hearing at 8 (R. 194) [hereinafter "Tr."].

The result was a redistricting proposal that included a markedly redrawn District 21. The black voting age population of the new District 21 was reduced from 45.0% to 36.2%; the Polk County "finger" was eliminated; the end-to-end distance was reduced by 37% to less than 50 miles; and the outer boundary of the district was reduced by 58%. *See* Guthrie Decl. Tab 2 & ¶ 4, in Def. Senate's Notice of Filing Decl. and Aff. (R. 188). This proposal was supported by all of the parties — including the State of Florida, the Florida Senate, the Florida House of Representatives, the Florida Secretary of State, Senator Hargrett, the United States Department of Justice, the citizens who had intervened in defense of the original plan, and the plaintiffs who challenged the original plan — except appellant. Tr. 5. At the same time that the proposal was submitted, all of the litigants stipulated to the district court that a *prima facie* case of unconstitutionality existed regarding the pre-existing plan. Tr. 11-12.

3. *The Remedial Hearing.* The district court held an evidentiary hearing on November 20, 1995. The proposed remedial plan was well publicized, and notice of the hearing was published in 11 newspapers. *See* J.S. App. 15a; *see also* Proof of Publication (R. 193). All of the parties, as well as all members of the public, were invited to submit comments, evidence, and objections at the hearing. No one in attendance objected to abolition of the challenged Plan 330 or to the stipulation that a *prima facie* case of unconstitutionality had been made. Tr. 12.

a. Sponsors of the proposed remedy presented extensive evidence of non-racial factors that shaped the new plan. Tr. 12-27; Def. Senate's Notice of Filing Decl. and Aff. (R. 188). Counsel for the Florida Senate, presenting the plan on behalf of all parties except appellant, outlined the reasons for the proposal and then placed into evidence, without objection and with the district court's concurrence, relevant maps and statistics and a detailed declaration by Mr. Guthrie, the State Senate's redistricting expert. Tr. 13. The district court accepted the declaration as Mr. Guthrie's direct testimony and offered all participants the opportunity to cross-examine him — an offer no one accepted. Accordingly, the testimony was admitted without challenge. Tr. 26.

Mr. Guthrie's declaration made clear that traditional districting principles had not been subordinated to race as a predominant factor in the drawing of the new district:

- The plan was designed to meet the one-person, one-vote principle of the Fourteenth Amendment (Guthrie Decl. ¶ 8) and the contiguity requirement of the Florida Constitution. *Id.* ¶ 9, citing *In Re Constitutionality of Senate Joint Resolution 2G,* 597 So.2d 276 (Fla. 1992).

- In designing its plan, the State sought to uphold its traditional redistricting practice of minimizing the disruption of existing constituencies (derived by that time from the challenged plan), while resolving plaintiffs' complaint that the existing plan had placed excessive emphasis on race. *Id.* ¶¶ 10-12.
- Another factor influencing the plan's creation was the political imperative of preserving the existing partisan balance among Republicans and Democrats, so that the plan would be acceptable both to the Republican-controlled Senate and the Democratic-controlled House of Representatives. *Id.* ¶ 18.
- The shape of District 21 and the surrounding districts in the new plan is in keeping with that of many other Florida legislative districts. *Id.* ¶ 5. The end-to-end distance of the two most distant points in the district is less than 50 miles (only 15 of Florida's 40 Senate districts cover less distance). *Id.* ¶ 4.
- One factor affecting the drawing of the plan was a desire that District 21 be composed predominantly of people having common interests based on shared socioeconomic status. *Id.* ¶ 14.
- Attempting to avoid the splitting of counties is not a traditional redistricting practice in Florida. *Id.* ¶ 21. County boundaries frequently are split, sometimes to comply with the one-person, one-vote rule, but often for other reasons. *Id.*[2]

[2] For example, many Senators believe that a county receives better representation when more than one legislator has constituents in the county. Guthrie Decl. ¶ 21 n.7. In fact, 31 of Florida's 40 Senate districts cross

- The new District 21 would have a 36.2% black voting age population, and would be fair to all voters, with no group being excluded from meaningful participation in the political process. *Id.* ¶ 17.

b. In response to the proposed remedial plan and the detailed evidence offered in its support, the only party who objected was appellant. Tr. 29-53. Appellant presented no new evidence, but relied solely on the plan's statistics to argue that race had predominated over traditional districting principles in its design. Tr. 48; *see also* Tr. 31-53. Appellant called no witnesses to support his objection, declining an invitation to cross-examine the State's witness. Tr. 47-48.[3]

Only one other person objected to the proposed remedy, former State Senator Helen Gordon Davis, who is not a party to the case. Tr. 53-55. Like appellant, she presented no evidence. Represented by counsel, she conceded that the configuration of the new District 21 "does not look overly bizarre" and that she had "no evidence of discriminatory intent," but she nevertheless contended that, because of the crossing of county lines, "an

county lines. *Id.* ¶ 22. And under both the challenged Plan 330 and the remedial plan, 19 of Florida's 40 Senate districts are composed of portions of at least three counties. *Id.* Tab 4. The proposed District 21's inclusion of parts of three counties — Hillsborough, Pinellas, and Manatee — was consistent with that practice and with redistricting combinations typically used in the affected area of the State. For example, Florida's House plan also includes one district that combines portions of Hillsborough, Pinellas, and Manatee counties and another two districts that each combine portions of Hillsborough and Pinellas counties. *Id.* ¶ 20.

[3] Although appellant initially suggested a desire to call the various lawyers for the state and federal parties to probe their intent, he did not press the suggestion (and does not here raise any issue in that regard). *See* Tr. 48-51. Nor did appellant call the mediator, who was present at the hearing.

inference can be drawn that race . . . is the overriding consideration." Tr. 54. In answer to questions from the district court, she acknowledged that crossing of county lines occurs regularly in Florida. Tr. 54-55.

4. *The District Court's Decision.* On March 19, 1996, the district court entered an order adopting the remedial plan, holding that it is constitutional under the standard set out in *Miller v. Johnson*. J.S. App. 3a-20a. All three judges joined in that conclusion with respect to the new plan. The court quoted at length from *Miller's* explanation of the burden that must be met to challenge the constitutionality of a redistricting plan on the ground that traditional districting principles were subordinated to race. J.S. App. 11a-12a, relying on *Miller*, 115 S.Ct. at 2488. The opinion found that "the November 20 hearing produced but two dissenters, plaintiff Lawyer and a former state Senator, both of whom neither presented relevant evidence nor offered germane legal argument." J.S. App. 15a.

The district court contrasted the challenged Plan 330 with the new plan and determined:

> [T]he plaintiffs sufficiently allege a cognizable, constitutional dispute concerning present District 21, which bears at least some of the conspicuous signs of a racially conscious contrivance. On the other hand, it is equally obvious that a cognizable, constitutional objection to the proposed District 21 is not established. In its shape and composition, proposed District 21 is, all said and done, demonstrably benign and satisfactorily tidy, especially given the prevailing geography.

Id. The court then found:

> Plan 386 offers to any candidate, without regard to race, the opportunity to seek elective office and both a fair

> chance to win and the usual risk of defeat — neither of which is properly coerced or precluded by the state, the court, or the Constitution. Candidates should compete and either win or lose based on their talent, their good fortune, and their views. Nothing about Plan 386 is determinative of an electoral outcome — because of race or otherwise.

Id. at 17a. The court concluded that the remedial plan "passes any pertinent test of constitutionality and fairness." *Id.*

Chief Judge Tjoflat wrote a concurrence. While joining the unanimous ruling that the proposed remedy is constitutional, he concluded that the district court should render a ruling on the constitutionality of the challenged District 21 as a prerequisite to adopting the remedy. J.S. App. 19a.[4] Judge Tjoflat nevertheless saw no impediment to court adoption of the remedial plan. He believed the record amply supported not only a determination that "the legislature's proposed remedy is constitutional," but also a determination that "District 21, as presently drawn, is the product of racial gerrymandering and thus cannot be squared with the Equal Protection Clause of the Fourteenth Amendment." J.S. App. 19a.

REASONS TO AFFIRM

Appellant has presented no issue warranting plenary review. He does not allege that the decision below conflicts with any other lower court decision. And the decision below is correct. The district court granted appellant everything he requested to

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[4] The majority held that an adjudication of liability was not necessary to empower the district court to enter the remedy, because a *prima facie* case of unconstitutionality of the challenged plan was made out and no one objected to elimination of the challenged plan. J.S. App. 7a-10a & n.3.

which he had a right: elimination of the challenged Senate plan and its replacement by a newly drawn plan that meets the requirements of the equal protection clause. J.S. App. 18a; *see id.* at 8a n.2. Because the new plan is constitutional, and the district court properly adopted the plan after giving appellant a full opportunity to contest it, the judgment raises no substantial federal question and should be affirmed.

1. The district court granted appellant complete relief on his complaint. Appellant sought a declaration of illegality of the original plan, elimination of that plan, and substitution of a plan that complies with equal protection guarantees. *See* note 1, *supra*. Appellant properly presents no question as to his first two requests: appellant in fact received the elimination of the challenged plan; and having obtained that concrete relief, appellant is not separately entitled to a declaratory judgment on the legality of the now-defunct plan. *See, e.g., Rhodes v. Stewart*, 488 U.S. 2, 3-4 (1988); *Hewitt v. Helms*, 482 U.S. 755, 761 (1987); *cf. A.L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324, 331 (1961) (declaratory judgment is a discretionary remedy that is properly withheld, even if a concrete controversy continues, where "a challenged 'continuing practice' is, at the moment adjudication is sought, undergoing significant modification so that its ultimate form cannot be confidently predicted"). And, in fact, appellant was granted his third request — the district court's new plan complies with the equal protection clause.

Under this Court's precedents, there is no violation (indeed, no strict scrutiny) unless traditional state districting principles are subordinated to race as the predominant factor in shaping the challenged district. *See Miller*, 115 S.Ct. at 2488; *see also Bush v. Vera*, 116 S.Ct. 1941, 1951-52 (1996); *Shaw v. Hunt*, 116 S.Ct. 1894, 1901 (1996); *Shaw v. Reno*, 509 U.S. 630

(1992). That standard is readily met here. Appellant not only failed to carry his burden of trying to prove the contrary but failed even to go forward with significant proof.

Appellant has based his entire argument for an inference of racial predominance on a few facts and allegations: the difference between the new District 21's racial composition and that of the three counties in the area, the district's shape, the district's crossing of county borders, the district's crossing of Tampa Bay, and the alleged lack of community of interest of the district's residents. J.S. 22-24. None of these bases, standing alone, even arguably establishes a requirement for a constitutional plan. And, collectively, appellant's arguments cannot overcome the district court's findings and the uncontroverted evidence submitted at the remedy hearing establishing that traditional districting principles were not subordinated to race in shaping the new District 21. *See* pages 5-7, *supra*.[5]

As the evidence showed, nothing about this district is unusual. It is composed of areas primarily adjacent to and on either side of Tampa Bay, creating a low-income urban district populated mostly by residents of Tampa and St. Petersburg who live near the cross-bay downtown areas of those cities. Many

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[5] In other constitutional voting rights cases, this Court has applied a clearly-erroneous standard of review (*Rogers v. Lodge*, 458 U.S. 613, 622-627 (1982)) and emphasized the special familiarity of district courts with the relevant locality, including traditional districting principles utilized in the jurisdiction and related geographic factors (*White v. Regester*, 412 U.S. 755, 769-770 (1973)). *See also Miller*, 115 S.Ct. at 2488 ("In our view, the District Court applied the correct analysis, and its finding that race was the predominant factor motivating the drawing of the Eleventh District was not clearly erroneous."); *cf. Clark v. Roemer*, 500 U.S. 646, 659 (1991) (local district courts in voting cases are more familiar than this Court "with the nuances of the local situation").

districts in the State cross county borders or bodies of water. The shape of the district is not peculiar relative to other Florida legislative districts and in light of the traditional state practice of minimizing disruption when redistricting. *See* page 6, *supra*.[6] And there is nothing odd about a given district, here a low-income urban district, containing a racial composition different from that of the larger surrounding counties, where populations are anything but homogeneous in racial terms.

The district court examined all of the evidence under the *Miller* standard (which has since been reaffirmed by this Court in *Bush v. Vera*, 116 S.Ct. 1941, and *Shaw v. Hunt*, 116 S.Ct. 1894). In light of the evidence, it properly concluded that, in its composition, shape, and compactness, the district is "demonstrably benign and satisfactorily tidy, especially given the prevailing geography." J.S. App. 15a; *see also* J.S. App. 11a, 17a. The court noted that the crossing of county boundaries and water in Florida, and particularly in the Tampa Bay area, is commonplace. J.S. App. 13a-14a.[7] And the court, observing that "the composition of District 21 has excited public discussion for many months," found that the lack of objection to the

[6] Deleting the Manatee County portion of District 21 would have been particularly disruptive. It would have moved a substantial number of voters into the otherwise unaffected District 26 (which is not scheduled for elections until 1998), precipitating a call for special elections so that the relocated voters could participate in electing their Senator. *See In re Apportionment Law*, 414 So.2d 1040 (Fla. 1982).

[7] The Florida Supreme Court has specifically held, with respect to "contiguity," that "the presence in a district of a body of water without a connecting bridge, even if it necessitates land travel outside the district in order to reach other parts of the district, does not violate this Court's standard for determining contiguity under the Florida Constitution." *In Re Constitutionality of SJR 2G*, 597 So.2d at 280.

remedial plan and the history of the litigation "suggest that the residents of District 21 regard themselves as a community and experience considerable comfort with the proposed resolution." J.S. App. 15a. Appellant has presented no evidence to raise an inference of racial predominance under the proper legal standard, much less any basis for reversing the district court.[8]

2. Independently of his equal protection challenge to the districting plan adopted by the district court, appellant challenges the court's authority to adopt the plan. Appellant, in his second question presented, asks whether the district court's "redistricting by use of mediation, . . . in closed door caucuses, violated the separation of powers and federalism." J.S. i (question 2). In addition to the infirmity that "[t]his issue was not raised below" (J.S. 19), the question presented may be summarily answered.

For one thing, appellant's assertion that mediation sessions were secret is wrong as a matter of fact.[9] For another, the state parties reached their agreement on the new plan outside the mediation process. *See* page 4, *supra*. And in any event, the process by which all parties except appellant arrived at an agreement on a proposed remedy and came to present it to the district court is legally irrelevant. Whether the consenting

[8] *See Dewitt v. Wilson*, 856 F.Supp. 1409, 1413 (E.D. Cal. 1994), *summarily aff'd*, 115 S.Ct. 2637 (1995) (district court examined the evidence in light of the proper standard; this Court summarily affirmed).

[9] The mediation sessions were always open to appellant (and once all state officials became parties, the sessions were open to the public and press as well). Transcript of October 26, 1995, Status Conference at 9-10 (R. 166); J.S. App. 15a. The mediator, of course, sometimes talked with one party outside the presence of another to see if differences could be bridged; but even these discussions could have been probed by examination of the mediator at the remedy hearing, which appellant did not request.

parties conducted mediation or other discussions to reach a consensus, the only issue relevant to appellant's legal rights is whether the new districting plan satisfied constitutional requirements. Appellant's second question presented, focusing on the mediation process, is insubstantial.

In the body of his jurisdictional statement, appellant seems to suggest somewhat different arguments against the district court's adoption of the remedial plan, arguments that assume the plan's constitutional validity and do not focus on the mediation process. Appellant seems to argue that the district court erred in ordering the new plan without first declaring the now-abandoned State Senate plan illegal and calling for a state legislative session to establish new district boundaries. J.S. 10, 16-21. As an initial matter, however, such arguments are not properly presented for review, because they are not fairly included in the questions presented at the front of the jurisdictional statement.[10] And even if properly presented, the arguments lack merit.

A federal court's *power* to enter a decree without determining liability is well established where there is a reasonable basis

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[10] This Court's Rule 18.3 incorporates for jurisdictional statements the requirements of Rule 14 for petitions for writs of certiorari. Rule 14.1(a) states: "Only the questions set out in the petition, or fairly included therein, will be considered by the Court." This Court has held that presentation of issues in the body of a petition is not a substitute for presentation on the "questions presented" page of the petition. *E.g., Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 114 S.Ct. 425 (1993). To the extent that appellant has suggested "process" defects in the district court's judgment that do not depend on the alleged use of "mediation . . . in closed door caucuses" (J.S. i (question 2)), the issues are not "fairly included" in appellant's second question presented (or its associated argument heading on this question, J.S. 16).

on the facts and in the law for the asserted federal claim (as there was here, *see* J.S. App. 7a-10a & n.3). That is what commonly occurs with consent decrees, one of whose key advantages often is the absence of a ruling on or required admission of liability.[11] Of course, for due process purposes, a party subject to a court judgment generally must have *either* given consent *or* received a fair opportunity to contest the judgment (as unwarranted or inadequate).[12] The defendants here gave consent. And appellant, for his part, had a full opportunity to contest the judgment. In fact, appellant got all he could legitimately claim under the terms of his complaint — a fair hearing, elimination of the challenged plan, and substitution of a new plan that, as we have explained, accords him equal protection. *See* pages 10-13, *supra*. Appellant is entitled to no more. Indeed, the remedial plan was proposed without condition as to liability and would have been put in place even if a violation had been declared. J.S. App. 19a-20a.

Appellant's insistence that a state legislative session was required to implement a new districting plan — to replace Plan 330, which itself had been judicially adopted under color of federal law — also lacks merit. The federal court was required to accord proper respect to state sovereign interests before

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[11] *See, e.g., Rufo v. Inmates of Suffolk Jail*, 502 U.S. 367, 383 (1992); *Local No. 93 v. City of Cleveland*, 478 U.S. 501 (1986); ABA Antitrust Section, *Antitrust Law Developments* 569-70 (3d ed. 1992).

[12] *See, e.g., United States v. Ward Baking Co.*, 376 U.S. 327, 334 (1964); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); *see also Matsushita Elec. Indus. Co., Ltd. v. Epstein*, 116 S.Ct. 873, 888 (1996) (Ginsburg, J., concurring in part and dissenting in part); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985); Laycock, *Consent Decrees Without Consent: The Rights of Nonconsenting Third Parties*, 1987 U. Chi. L. Forum 103, 104, 130.

entering a remedial order. *See, e.g., Missouri v. Jenkins,* 495 U.S. 33 (1990). But appellant has no valid complaint on this score.

In contrast to state officials, none of whom has complained, appellant is not the proper party to invoke the State's sovereign interests. Moreover, as the consent of all state officials confirms, state sovereign interests were in fact fully respected. The three-judge district court took great care to find that proper consent to the decree's entry to displace the challenged plan was given by all of the state parties, including the State named as such, "acting through its lawfully empowered officials." J.S. App. 8a; *see id.* at 6a-8a. Nothing more was required for the entry of what for the State's purposes is a consent decree. There is no basis for this Court to question that resolution of a state-law issue.

CONCLUSION

For the foregoing reasons, the motion to affirm should be granted.

Respectfully submitted,

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